

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2497 CUTTACK, THURSDAY, NOVEMBER 17, 2011/KARTIKA 26, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 4th October 2011

No. 9952—li/1(BH)-7/2008-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 3rd September 2011 in Industrial Dispute Case No. 300 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between Shri Pravat Kumar Biswal, Contractor, M/s. Bacchus Bottling Plant Pvt. Ltd., Sutei, Chhanpur, Dist. Balasore and its workman Miss Kalpana Patra was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 300 OF 2008

Dated the 3rd September 2011

Present :

Shri Raghubir Dash, o.s.J.s. (Sr. Branch),
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

The management of
Shri Pravat Kumar Biswal, Contractor of
M/s. Bacchus Bottling Plant Pvt. Ltd.,
Sutei, Chhanpur, Dist. Balasore. First Party—Management

And

Miss Kalpana Patra,
C/o Ramesh Chandra Patra,
At Kalidaspur, P.O. Haripur,
Dist. Balasore. Second Party—Workmen

Appearances :

For the First Party—Contractor himself	..	Shri P. K. Biswal
For the Second Party—Workman	..	Shri S. Behera, Authorised Representative.

AWARD

This is a reference u/S 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') made by the Government of Odisha in the Labour & Employment Department vide their Order No. 5997—li/1 (BH-I)-7/2008-LE., dated the 26th May 2008.

The Schedule of reference runs as follows :—

“Whether the termination of services of Miss Kalpana Patra with effect from the 11th February 2007 by Shri Pravat Kumar Biswal, Contractor of M/s. Bacchus Bottling Plant Pvt. Ltd., Sutei, Post. Chhanpur, Dist. Balasore is legal and/or justified ? If not, what relief she is entitled to ?”

2. According to the second party-workman, she was engaged by the first party as a contract labourer and she had been working continuously from the 1st February 2003 till the 11th February 2007 when she was refused employment without any reason. When she approached the first party to give her employment the later did not pay any heed. So, she approached the Factory Owner who instructed the Contractor to accept her joining report but the contractor refused to give her employment. Ultimately, she approached the local Labour Officer who tried to bring about a compromise. When all efforts failed during the conciliation proceeding a conciliation failure report was submitted by the Labour Officer.

3. The first party has pleaded in his written Statement that the Second party was a contract labourer and she used to be engaged as and when her service was required by the Principal employer. Never did she complete 240 days of work in any of the years during the entire span of her employment. The second party was neither sincere nor obedient in performing her duty. While working on daily wage basis she voluntarily remained absent from her duty from the 11th February 2007 without submitting any leave application or making any representation. On account of her long absence the first party suffered a lot of difficulties. He verbally asked the second party to join in her duty but she did not. So, the first party struck off her name from the daily Attendance Register with effect from the 1st March 2007 following the provisions of Rule 12 (5) of the the Odisha Contract Labour (Regulation & Abolition) Rules, 1975 (for short, the Rules). She was also informed to collect her legal dues but she did not turn-up.

4. The following issue has been settled :—

ISSUES

- (i) “Whether the termination of services of Miss Kalpana Patra with effect from the 11th February 2007 by Shri Pravat Kumar Biswal, Contractor of M/s. Bacchus Bottling Plant Pvt. Ltd., Sutei, P.O. Chhanpur, Dist. Balasore is legal and/ or justified ? If not, what relief she is entitled to ?”

5. The second party has examined herself as W.W. No. 1. The first party has examined himself as M.W. No. 1 and one of his labourers as M.W. No. 2.

FINDINGS

6. It is not disputed by the first party that the second party was under his employment during the period from the 1st February 2003 to the 10th February 2007. However, it is pleaded that she had not completed one year of continuous service as defined u/s 25-B of the Act. To prove this fact the first party has exhibited the Register of Wages for the period from 12/2003 to 2/2007. The same is marked as Ext. D. series. I have thoroughly examined the entries in the Register of Wages and find that during the period 12/2003 to 11/2004 the Workman had received wages for 190 days; for the period from 12/2004 to 11/2005 for 213 days; from 12/2005 to 11/2006 for 175 days and from 12/2006 to 2/2007 she received wages for 45 days of work. It is not explained as to why the entries in the Register for the period from 2/2003 to 11/2003 have not been produced even though there is no specific denial that the workman had worked with the first party from the 1st February 2003 to the 11th February 2007. Be that as it may, on scrutiny of the entries in the Register of Wages it is found that the workman was engaged in every calendar month during the period from 12/2003 to 2/2007 and in some months she had worked for 15 to 22 days. Whereas in some months she had worked for less than 15 days. Though it is claimed that she used to be engaged as and when work was available, it is not proved by the first party that because of non-availability of work she was not engaged continuously. From the entries in the Register it can be ascertained that from 12/2003 to 7/2005 the first party had engaged 40 to 42 workers and thereafter he had engaged 34 workers. It is also found that all the workers were of unskilled category. It is also found that almost all the workers were not being engaged continuously. It is found that after the workmen have been engaged for less than 15 days in a month. It is not explained as to why the workmen were not given employment throughout the year/month. If work was not available for as many as 42 to 43 workers the first party could have employed less number of workers so that they would have got continuous employment throughout the year. It is quite apparent that in order to bring about artificial breaks the first party had engaged more workers than required so that they would never be in a position to complete 240 days of work in any calendar year. Bringing about such artificial breaks is an unfair labour practice intended to deprive the workmen of the benefit of Section 25-F of the Act. It is not a case where there was disruption in the continuity of the employment of the second party because of non-availability of work. Therefore, the period covered by the artificial breaks should be ignored and it is to be presumed that the workman was under the employment of the first party continuously from the 1st February 2003 to the 10th February 2007. During cross-examination the Contractor (M.W. No. 1) has stated that frequent absence from duty is the cause of the workman having not completed 240 days of work in any year. But this appears to be an after thought. He also says that no action was taken against her for such "unauthorised absence". That apart, the Contractor has not shown to have held a domestic enquiry against the workman for such habitual absence which is a misconduct under Rule 12 (2) (O) of the Rules.

7. The first party takes the stand that the workman voluntarily absented from duty from the 11th February 2007 and did not resume duties despite of verbal approach of the first party for

which her name was removed from the Attendance Register. To prove this plea the first party has relied on Ext. B and Ext. B/1. Ext. B is a notice dated the 2nd March 2007 purportedly sent to the second party intimating that her name was struck off the Rolls with effect from the 1st March 2007. Ext. B/1 is a notice dated the 20th April 2007 sent to the second party by Registered Post asking her to collect her legal dues consequent upon removal of her name from the Attendance Register. Ext. C is the acknowledgement due bearing the signature of the second party suggesting that she had received the notice marked Ext. B/1. The first party has not proved any notice sent to the second party asking her to resume duty before striking out her name.

It is pleaded that the workman's name was struck off under the provisions of Rule-12 (5) of the Rules. The said Rule contemplates that if a workman absents himself for more than five continuous working days without leave application or making a representation to the Contractor and "without sufficient cause" his service shall be liable for termination without notice. Thus, it is found from the said Rule that such continuous absence should be without sufficient cause. In order to ascertain whether the absence is for without sufficient cause the Contractor has to give an opportunity to the labourer to showcause. In the present case the first party does not appear to have given such an opportunity.

8. The burden is on the employer to prove that an employee has abandoned his job. In this case the first party has not adduced any evidence showing that the workman had voluntarily abandoned her job. Without much delay after the alleged denial of employment she raised a dispute before the local Labour Officer by filing a complaint petition on the 4th April 2007 which negatives the contention that she had abandoned her job. Under such circumstances, the plea is found not proved and it is held that it is not a case of abandonment of job.

9. Rule-12 of the Rules lays down that no contractor shall without reasonable cause terminate the service of a workman who has been in his employment continuously for a period of 30 days or more without giving such workman at least three days notice in writing or wages in lieu thereof.

It is not the case of the management that this Rule was complied with. The conciliation failure report reflects that the Contractor/first party took the stand during the conciliation proceeding that since the Principal Employer, i.e. M/s Bacchus Bottling Plant Pvt. Ltd., did not agree to allow the second party to enter inside the premises of the establishment the Contractor was not in a position to reinstate her. This indicates that the first party had refused employment to her which is not in accordance with the Rules.

Thus, it is found to be not a case of voluntary abandonment of job, nor was the service of the second party terminated in compliance with the Rules. It is held to be a case of denial of employment. Such denial is not justified by the first party. Therefore, the termination of her service is neither legal nor justified.

10. The second party is a lady now aged about 28 or 29. She was under the employment of the first party for a period of four years. Though it is stated by M.W. no. 2 that after her disengagement the second party has been running a Ladies Tailoring Shop in her own village earning more than Rs. 5,000 per month, but her evidence has got no evidentiary value in as much as she has no direct

knowledge about what she has stated. She claims to have heard it from the workman but the workman denies that she has been running a Tailoring Shop. In the absence of reliable materials, it cannot be said that the workman is in gainful employment. Taking all these facts and circumstances into consideration, this Tribunal Awards the relief of reinstatement with compensation of Rs. 15, 000 (Rupees fifteen thousand) only, in lieu of back wages, in favour of the workman.

The reference is answered accordingly. The first party to implement the Award within a period of two months of the date of its publication in the Official Gazette.

Dictated and corrected by me.

RAGHUBIR DAS
3-9-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DAS
3-9-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor

T. K. PANDA

Under-Secretary to Government